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13 **UNITED STATES DISTRICT COURT**  
14  
15 **DISTRICT OF NEVADA**

16 SFR INVESTMENTS POOL 1, LLC,

17 Case No. 2:22-cv-0192-JAD-BNW

18 Plaintiff,

19 vs.

20 NEWREZ LLC, dba SHELLPOINT  
21 MORTGAGE SERVICING; DOES I through  
22 X, inclusive; and ROE BUSINESS ENTITIES  
23 I through X, inclusive,

24 Defendants.

25 **MOTION TO DISMISS COUNTERCLAIMS**

26 NEWREZ LLC dba SHELLPOINT  
27 MORTGAGE SERVICING,

28 Counterclaimant,

29 vs.

30 SFR INVESTMENTS POOL 1, LLC; DOES I  
31 through X, inclusive; and ROE  
32 CORPORATIONS I through X, inclusive,

33 Counterdefendants.

34 Counter-Defendant, SFR Investments Pool 1, LLC, (“SFR”) hereby moves for dismissal  
35 of Counter-claimant Shellpoint Mortgage Servicing’s (“Shellpoint”) counterclaims.

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. STATEMENT OF RELEVANT FACTS

3 Shellpoint alleges six (6) counterclaims, five (5) of which must be dismissed. **First**,  
4 Shellpoint alleges a counterclaim for quiet title, but it is not premised on any independent  
5 controversy; it is just a repackaged of Shellpoint's defense against SFR's claim that the deed of  
6 trust is not a valid encumbrance against the Property. **Second**, Shellpoint's intentional interference  
7 with a contract claim fails as a matter of law. Shellpoint does not allege a single act on the part of  
8 SFR in which SFR interfered with the borrower's performance under the contract. After all,  
9 according to the notice of default, the borrower has not performed since July 1, 2010. **Third**,  
10 Shellpoint's abuse of process likewise fails. SFR's motive in filing its action is solely to resolve  
11 a legal dispute. **Fourth**, Shellpoint's slander of title claim fails because SFR has not made a false  
12 or malicious statement regarding title to the property. **Fifth**, Shellpoint's claim for equitable lien  
13 is inapplicable as to SFR. This doctrine applies when a party wrongfully uses money belonging  
14 to another to buy real property.

## II. LEGAL STANDARD

## A. Legal Standard for Motion to Dismiss

17       Federal Rule of Civil Procedure 12(b)(6) provides that a complaint may be dismissed for  
18       “failure to state a claim upon which relief can be granted.” The U.S. Supreme Court has clarified  
19       the applicable standard under FRCP 12(b)(6) is the “plausibility standard” i.e. when the plaintiff  
20       pleads factual content that allows the court to draw a reasonable inference defendant is liable for  
21       the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). However, the complaint must  
22       offer more than an “unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* The facts  
23       actually pled must give rise to a plausible claim for relief. *Id.* As the *Iqbal* Court noted,  
24       “determining whether a complaint states a plausible claim for relief ... [is] a context specific task  
25       that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 678-  
26       679. But if all that can be inferred from the pled facts is the “mere possibility of misconduct,” the  
27       dismissal is warranted. *Id.* In other words, the “factual allegations must be enough to raise a right

1 to relief above the speculative level.” *Id.* at 1965. Finally, “a plaintiff’s obligation to provide the  
 2 grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic  
 3 recitation of the elements of a cause of action will not do.” *Bell Atlantic v. Twombly*, 550 U.S. 544,  
 4 544 (2007).

5 **A. Shellpoint’s Quiet Title Claim Fails**

6 Shellpoint alleges a claim for quiet title but does not allege any independent basis by which  
 7 to make such a claim.<sup>1</sup> Under NRS 40.010, there must be an adverse claim the party is asserting  
 8 by which the Court must declare something. But here, Shellpoint offers no independent adverse  
 9 claim against SFR; it merely asks this Court to reject SFR’s claim that the deed of trust is not a  
 10 valid lien against the Property. In that regard, Shellpoint’s quiet title claim is just a re-packaging  
 11 of its defense. There being no stand-alone quiet title claim which Shellpoint could assert against  
 12 SFR, this Court should dismiss Shellpoint’s counterclaim for quiet title.

13 **B. Shellpoint’s Intentional Interference With Contract Claim Fails on its Face.**

14 Under Nevada law, there are four elements to an intentional interference with contract  
 15 claim, the third and fourth of which defeat Shellpoint’s claim here, namely (1) defendant  
 16 committed intentional acts intended or designed to disrupt the contractual relationship; and (2)  
 17 there as an actual disruption of the contract. *Sutherland v. Gross*, 105 Nev. 192, 196, 772 P.2d  
 18 1287, 1290 (1989). In terms of the intentional acts designed to disrupt, this requires a showing that  
 19 SFR intentionally interfered with the borrower’s performance under the note and deed of trust. *See*  
 20 *J.J. Industries, LLC v. Bennett*, 119 Nev. 269, 275, 71 P.3d 1264, 1268 (2003). In other words, it  
 21 is not sufficient there is an act that causes an interference, there must be an intentional act aimed  
 22 at inducing the third party to breach the contract with plaintiff. *Id.* citing *Ramona Manor*  
 23 *Convalescent Hospital v. Care Enterprises*, 255 Cal.Rptr. 120 (Ct. App. 1986).

24 In the present case, Shellpoint only alleges SFR, by filing this action and seeking an  
 25 injunction (one which the Court denied) has interfered with Shellpoint’s remedies under the deed  
 26 of trust i.e. its remedy to foreclose.<sup>2</sup> But this is not sufficient under Nevada law. Instead, Shellpoint

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 1 <sup>1</sup> See Counterclaim, ¶¶ 12-20.

28 <sup>2</sup> See Counterclaim at ¶¶ 26; 28.

1 must state facts which show SFR intentionally disrupted the borrower's payments/performance  
 2 under the deed of trust. But Shellpoint could hardly plead this (nor does it) because the borrower  
 3 stopped performing on July 1, 2010, long before SFR ever existed let alone had any interest in the  
 4 Property. What is more, nothing by way of SFR's actions in filing this suit have created an actual  
 5 disruption of the contract because SFR's filing of this suit did not cause the borrower to default  
 6 back on July 1, 2010. Moreover, even ignoring Nevada law, this Court already denied SFR's  
 7 injunction, so nothing stands in the way of Shellpoint exercising its remedy of foreclosure.

8 This Court must dismiss Shellpoint's intentional interference with contract claim.

9 **C. Shellpoint's Abuse of Process Claim Fails.**

10 In Nevada, an abuse of process claim requires a showing that a defendant had an ulterior  
 11 purpose in filing the action other than resolving a legal dispute and that defendant's use of process  
 12 is not proper in the regular conduct of the proceedings. *LaMantia v. Redisi*, 118 Nev. 27, 30, 38  
 13 P.3d 877, 879 (2002). Examples where abuse of process was found include a suit brought against  
 14 a doctor knowing there was no basis for the claim for the ulterior purpose of inducing settlement  
 15 on another claim<sup>3</sup> and where a creditor attached property valued greatly in excess of the debt to  
 16 coerce payment.<sup>4</sup> Here, Shellpoint alleges SFR's ulterior purposes include (1) to stop the  
 17 foreclosure; and (2) to inflict financial injury on Shellpoint. But under Rule 11(b), by signing the  
 18 complaint, SFR's counsel has certified the claims are warranted by existing law or for establishing  
 19 new law and the factual contentions have evidentiary support or will likely have evidentiary  
 20 support after an opportunity to engage in discovery.

21 Nevertheless, this Court already denied SFR's request for an injunction, so the alleged  
 22 ulterior motive to stop the foreclosure cannot support Shellpoint's claim. Additionally, what does  
 23 SFR gain by making Shellpoint incur fees when it too must incur fees and costs to litigate this  
 24 matter. Thus, neither of the alleged ulterior motives pass muster.

25 While SFR appreciates Shellpoint disagrees on the issue of NRS 106.240, the fact remains  
 26 there exists no published law in Nevada on the issue of whether the language in the rescission was

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27 <sup>3</sup> *Bull v. McCuskey*, 96 Nev. 706, 615 P.2d 957 (1980).

28 <sup>4</sup> *Nevada Credit Rating Bureau, Inc. v. Williams*, 88 Nev. 601, 503 P.2d 9 (1972).

1 sufficient to decelerate the loan or even if it did, whether that language was sufficient to address a  
 2 prior acceleration via letter. Thus, on this issue SFR's complaint is warranted by existing law or  
 3 for establishing new law. Additionally, SFR has learned through discovery in other matters, Bank  
 4 of America typically sends acceleration letters 62 days from date of default. SFR has seen first-  
 5 hand these letters and the letters state the loan will be accelerated if the borrower fails to bring the  
 6 loan current on a date certain. Even Shellpoint has admitted these letters exist during trial testimony  
 7 before this very Court. What is more, Shellpoint has testified as part of its onboarding process it  
 8 always asks whether the loan is accelerated. In light of all of this, SFR will likely obtain the further  
 9 evidentiary support for its NRS 106.240 argument in this matter.

10 As for SFR's allegations that Shellpoint lacks the authority to foreclose, it is undisputed  
 11 the chain of assignments are not clean. While Shellpoint wants to swat this away with an allegation  
 12 that this or that assignment was just an error, the fact remains the chain is questionable making  
 13 SFR's claim meritorious. Finally, NRS 107.200 and 210 required Shellpoint to respond to SFR's  
 14 requests within 21-days. Shellpoint failed to do this. It took SFR continually asking for the  
 15 information for Shellpoint to finally respond, only to receive information that did not comport with  
 16 the note. SFR only has only one goal in mind in bringing its suit: to resolve legitimate legal  
 17 disputes. Thus, Shellpoint's claim for abuse of process must be dismissed.

18 **D. Shellpoint's Claim for Slander of Title Fails.**

19 A slander of title claim requires the showing of a false and malicious communication  
 20 disparaging plaintiff's title in land. The biggest flaw with Shellpoint's claim is it holds no title to  
 21 the Property. The term "title" refers to fee simple ownership. *See Levinson v. Eighth Judicial Dist.*  
 22 *Court*, 109 Nev. 747, 751, 857 P.2d 18, 21 (1993). Shellpoint claims an interest in a lien recorded  
 23 against the Property, but it has no fee simple title to the Property. SFR is the title owner and  
 24 therefore it cannot slander its own title. In fact, Shellpoint alleges SFR "disparaged Shellpoint's  
 25 interest,"<sup>5</sup> but there is no such claim in Nevada. The claim is slander of title, not slander of interest.  
 26 Thus, Shellpoint's claim for slander of title must be dismissed.

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28 <sup>5</sup> See Counterclaim at ¶ 37.

1                   **E. Shellpoint's Claim for Equitable Lien Fails.**

2                   As an alternative remedy to its quiet title claim, Shellpoint seeks an equitable lien. SFR  
3 can only interpret this to mean it is asking, should this Court deem the deed of trust invalid under  
4 NRS 106.240, the Court should declare an equitable lien against the Property, in the same amount  
5 the deed of trust secured.<sup>6</sup> This claim fails because an equitable lien does not apply in this  
6 circumstance. Under Nevada law, an equitable lien is only appropriate where a party keeps money  
7 belonging to another to purchase real property. *Maki v. Chong*, 119 Nev. 390, 75 P.3d 376 (2003).  
8 As the *Maki* Court noted, the doctrine exists to address a situation where “one who has purchased  
9 real property with funds of another, under circumstances which ordinarily would entitle such other  
10 person to enforce a constructive trust in, or an equitable lien against, the property...” *Id.* quoting  
11 *Remedy of One Whose Money Is Fraudulently Used in the Purchase or Improvement of Real*  
12 *Property*, 43 A.L.R. 1415, 1446 (1926). In other words, it is a doctrine that protects a creditor  
13 when a debtor fraudulently obtains the money, and then uses that money to purchase real property.  
14 *Id.* citing *Webster v. Rodrick*, 394 P.2d 689, 691 (Wash. 1964).

15                   Of course, these facts do not exist, nor does Shellpoint allege them. Instead, Shellpoint  
16 makes various allegations about SFR benefiting from the fact Shellpoint had to litigate the validity  
17 of the HOA foreclosure sale and COVID stalled foreclosure. None of the allegations go toward an  
18 equitable lien. Therefore, this Court should dismiss Shellpoint's equitable lien claim.

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28                   <sup>6</sup> See Counterclaim at ¶ 63.

1                   **III. CONCLUSION**

2                   SFR asks this Court to dismiss the following counterclaims: quiet title, intentional  
3 interference with a contract, abuse of process, slander of title and equitable lien under FRCP  
4 12(b)(6).

5                   DATED this 23rd day of March, 2022.

6                   **HANKS LAW GROUP**

7                   /s/ Karen L. Hanks  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of March, 2022, pursuant to FRCP 5(b)(2)(E), I caused service of a true and correct copy of the foregoing **MOTION TO DISMISS COUNTERCLAIMS** to be made electronically via the U.S. District Court's Case Management/Electronic Case Files (CM/ECF) system upon the following parties at the e-mail addresses listed below:

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